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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,989	09/26/2001	Roland N. Walker	12160.2	2969
21999	7590	05/02/2007		
KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111			EXAMINER BALDWIN, GORDON	
			ART UNIT 1775	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/964,989	WALKER, ROLAND N.	
	Examiner	Art Unit	
	Gordon R. Baldwin	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-20, 25-27, 31-35 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15, 26, 27, 35 and 37-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-10, 16-20, 25 and 31-34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 12-15, 26-27, 35 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skonecki (Pat. No. 5,305,550) and further in view of Roulleau (Pat. No. 5,142,976).

Consider claims 12, 13, 35, 37-41, Skonecki teaches an organic product such as a fresh natural flower, such as a rose, in a natural configuration in which the product is provided with a personalized message or drawing inscribed on one of its petals. (Col. 1 lines 24-38). Skonecki does not require a pad-printed image, however, Roulleau teaches as organic product in which the surface of the product comprises pad printed images. (Col. 1 lines 61-65) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the organic product of Skonecki with a pad printed image so as not to damage, or etch or cut the surface of the organic product when the image is printed on the surface on the organic product and in order to provide the surface of the organic product with a repeatable and identical image.

Regarding claims 15 and 27, patentability of product-by process claims are based on the product itself even though such claims are limited and defined by the process. Thus, the product is unpatentable if it is the same as or obvious from the product of the prior art even if the prior product was made by a different process.

Regarding claims 14 and 26, Skonecki teaches the inscription may be a personalized message such as the word, "congratulations". (See Skonecki Fig. 1)

Response to Arguments

Applicant's arguments filed 4/4/2007 have been fully considered but they are not persuasive.

First, the teaching of Roulleau is considered to teach a reasonable expectation of success by the fact that an unbroken or compromised fragile organic structure can have a pad-printing process applied to it without causing damage to the structure. While the Skonecki reference is used to show that flowers, flower petals, can have an ink-based message applied to them, without destroying the flowers structure. Therefore, the combination of the two references is considered to show that a fragile uncompromised organic product in a roughly oval shape (like the flower blossom in Skonecki and the egg of Roulleau) is capable of having a pad printed image applied to it by an automated mechanism.

Second, as for the "delicate" nature of a flower versus an uncompromised egg, while an egg may have a more rigid structure than a flower, the flower has an elasticity that would allow for a substantial compressive force to be applied and still recover to its original shape or in a shape very close to the original shape. While an egg is not capable of reproducing such a action since once its compressive threshold is exceeded, the egg for all intensive purposes is unusable as a decorative object. Without the actual pad-printing pressures claimed by the applicant, in addition to those of the prior art references, it is difficult to determine the actual differences between the applicant's pad-printing process versus Roulleau, however without a distinct showing from the claims or the specification, it is not clear exactly how the printing process of the surface of an egg

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would not work on the surface of an oval shaped blossom as shown by the applicant in the drawings.

Third, concerning the statement of Roulleau about breaking an already cracked egg. A cracked egg only has a thin membrane, which is generally cut through initially by the shards of shell and breached, and breaking once any amount of force is applied. This argument is not considered persuasive because a flower blossom has a reasonably substantial amount of resilience, while neither a cracked nor an uncracked egg is going to have such a resilience.

Lastly, while the argument concerning the rotation of the flower as compared with the egg is understood, in reference to the Rolleau reference and its, "screw jack" system, but this argument is not considered pertinent since the flowers may be placed on the conveyor system in such a way as to eliminate the likelihood of having a split mark on different petals.

While the experimentation requested by the applicant has been considered, the subjective nature of the experiment, (such as to what degree is the egg cracked?) is not exactly clear and it not considered to carry a great deal of weight with regard to the amount of pressure a flower versus the amount of pressure a cracked egg can absorb and still be a viable product.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon R. Baldwin whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GRB



JENNIFER MCNEIL
SUPERVISORY PATENT EXAMINER

4/27/17